

October 8, 2004

MEMORANDUM

TO: Purchasing Offices
Departments, Institutions, Agencies
Commonwealth of Virginia

FROM: Ron Bell
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-018

Enclosed is PIM #98-018, effective October 8, 2004, representing changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. The changes are noted in the table below. All changes to the *APSPM*, including PIM #98-018, are incorporated into a web-based *APSPM*, which is downloadable from the eVA and Division of Purchases and Supply web sites at www.eva.state.va.us and www.dgs.state.va.us/dps, respectively. The location of text changes is indicated by an arrow in the margin (—>) with the corresponding PIM number identified next to the changes.

Appendix C contains a log in which to list the PIM number and date of revision. This letter and the corresponding PIM #98-018 should be filed in the back of the Appendix C log.

	Summary of Changes
3.10 a.	A second paragraph is added to section 3.10 a. which advises agencies and institutions not to accept a bad business deal or a lower quality vendor, product or service in order to meet SWAM Business goals.
3.10 f., 5.6 d., 5.7 a.4., 5.7 b.11., 6.1, 6.3 d., 6.5 b., 6.6, 7.4 a., 7.5 m., 14.5 e., Appendix B Section II, 7., 7.H., 7.I., 7.J., 7.K.	The word proscribed is changed to read prescribed.

3.10 g.	A new section is added in 3.10 to address procurement set-asides. The use of 30 percent of the agency's discretionary procurement funds discussed in this section should not be confused with the 40 percent aspirational goal stated in the July 30, 2004 memorandum from the Chief of Staff.
3.18	The first sentence is reworded and a new second sentence is added indicating that professional service procurements must be advertised over \$30,000.
Annex 3-B	The Summary of Procurement Policies adds, "Unless set-aside for Small businesses only" to the number of valid sources to be solicited for each dollar threshold.
4.23 b.	A last sentence is added to indicate that public posting is required for professional services procurements over \$30,000.
5.1 b.	The first sentence of section 5.1 b. on written quotes over \$5,000 is modified to add, <i>Unless set-aside for Small businesses only (see 3.10.g)</i> , purchases over \$5,000 and up to the small purchase dollar threshold of \$50,000 require soliciting at least four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, in writing (see 3.18, Publicly Posted Notices).
5.3 a.	The last three sentences of this paragraph are revised to clarify that an award may be made to other than the lowest priced bidder if the award is made under a remedial procurement plan; however, the award shall be made to the next lowest responsive and responsible minority or women-owned bidder. When using charge cards, a minimum of one minority or women-owned business must be solicited, if available.
5.6 b.	The first sentence of section 5.6 b. on Unsealed Bidding is modified to add, <i>Unless set-aside for Small businesses only (see 3.10.g)</i> , solicit four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available.
5.6 d.	A second sentence is added to clarify that if the award is made to other than the lowest priced bidder under a remedial procurement plan, the award shall be made to the next lowest responsive and responsible minority or women-owned bidder.
5.7 a. 1.	The first sentence of section 5.7 a. 1. on Unsealed Proposals is modified to add, <i>Unless set-aside for Small businesses only (see 3.10.g)</i> , solicit four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, by mail, fax, or electronically.
5.7 b. 8.	The first sentence of 5.7 b. 8. on Unsealed Best Value Acquisition is modified to add, <i>Unless set-aside for Small businesses only (see 3.10.g)</i> , solicit four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, by mail, fax or electronically.
6.2 e.	The first sentence on Competitive Sealed Bidding sources is modified to add, <i>Unless set-aside for Small businesses only</i> , solicit at least six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available.
6.3 d.	A second sentence is added to clarify that if the award is made to other than the lowest priced bidder under a remedial procurement plan, the award shall be made to the next lowest responsive and responsible minority or women-owned bidder.
7.2 g.	The first sentence of 7.2 g. is modified to add, <i>Unless set-aside for Small businesses only</i> , for the purchase of material, equipment, supplies or nonprofessional services estimated to cost \$50,000 or more, RFPs shall be sent to at least six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available.

7.5 i.	The first sentence of 7.5 i. is modified to add, <i>Unless set-aside for Small businesses only</i> , solicit six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available, by mail, fax or electronically, and publicly post a copy of the solicitation on the DGS/DPS eVA web site www.eva.state.va.us .
Annex 7-B, Step 2, V.A	The Memorandum issued by previous Secretary of Administration on the “Participation of Small Businesses and Businesses Owned by Women and Minorities in State Procurement Activities” dated August 12, 1991, is rescinded. Implementation guidance issued by DGS/DPS dated August 12, 1991 and regulatory language contained in the <i>APSPM</i> is also rescinded. Delete the last paragraph in Annex 7-B, Step 2, V. A. on Competitive Negotiation Step-by-Step Procedures entitled “ ADDITIONALLY. ”
Annex 7-E	Delete the section entitled <u>SWAM Requirements</u> in Annex 7-E on the RFP Solicitation and File Checklist that refers to the “Implementation Guide on the State Procurement Memorandum for the Participation of Small Businesses and Businesses owned by Women and Minorities in State Procurement Activities.”
11.4	Section 11.4 on Alternative Dispute Resolution is replaced. It authorizes the use of ADR procedures for contractual disputes.
14.5 e.	The beginning of the second sentence in 14.5 e. is changed to add, <i>Unless set-aside for Small businesses only</i> , solicit a minimum of four (4) valid sources; including two (2) minority or women-owned businesses, if available. An additional sentence is added to clarify that if the award is made to other than the lowest priced bidder under a remedial procurement plan, the award shall be made to the next lowest responsive and responsible minority or women-owned bidder.
14.5 g.	Quick Quote over \$30,000 is changed to indicate that Quick Quote shall not be used to solicit competition for requirements over \$50,000 except in the case where emergency purchase requirements meeting the criteria of paragraph 9.1 are used.
14.13	A new section is added on eVA Multiple Orders to address the procedure for solicitations that should include notifying the bidder or offeror about the number of purchase orders that may be placed against the resulting contract.
Appendix A	A definition for Set-asides is added to Appendix A.
Appendix B, Section I, U.	The Announcement of Award general term and condition shall be included in all solicitations over \$50,000.
Appendix B, Section II, 59.	Special term and condition 59 is modified and renamed, eVA Business to Government Contracts and Orders. Space is provided for the buyer to insert the expected number of orders that may be placed during the contract term.
Appendix B, Section II, 60	Special term and condition 60 is added to allow set-asides.
Index	A listing for Set-asides is added to the Index.

For procurement questions concerning the implementation the agency’s small business set-aside program please call DGS, Rich Silwoski for construction/capital outlay procurement and Ron Bell or your DPS Account Executive for general procurement issues. Ron Bell and Rich Silwoski can be reached at 804-786-3311. Please contact VITA, Susan Woolley, for technology procurement questions. She can be reached at 804-343-9004. If you have questions about these rules generally, please call DMBE for assistance. DMBE can be reached by calling Ed Hamm or Jean Bass at 786-6585.

Changes to each of the chapters, appendices, index, and changes to the searchable whole *APSPM* version will be made within the next few days on the eVA website, under Other Buyer Info, Policies-Manuals-Offices, *APSPM* Manual or after log in, under Reports and Documents, Policies-Manuals-

Offices, then *APSPM*. Changes to the *Vendors Manual* will also be available within the next few days on the eVA website.

To print a hard copy of the manual, save the chapters and appendices to your hard drive or network and print from there. Printing directly from the website will result in lost formatting. Use the “whole *APSPM*” for text searches. If you should have questions about the changes, please contact Nancy M. Davis at 804-786-0323 or ndavis@dgs.state.va.us.

Changes to the APSPM:

- 3.10 a. Agencies and institutions should not accept a bad business deal or a lower quality vendor, product or service in order to meet SWAM business goals. Quality, price and contractual terms should not be sacrificed in any meaningful way in order to achieve SWAM business procurement goals.
- 3.10 g. **Set-asides.** Procurement set-asides are authorized for prime contracts in accordance with the Governor's Chief of Staff's memorandum dated September 27, 2004.

Small Businesses. Agencies and institutions may set aside, in whole or in part, procurements valued at up to 30 percent of their discretionary procurement funds exclusively for small businesses, based on their certification as such by the Department of Minority Business Enterprise.

When setting aside procurements there must be adequate competition to ensure the Commonwealth continues to obtain fair and reasonable prices and the orders must be placed through eVA. Set-asides do not apply to mandatory sources, such as the Virginia Industries for the Blind, Virginia Correctional Enterprises or mandatory statewide contracts.

- 3.18 **Publicly Posted Notices.** All solicitation, addenda and award actions (including emergency and sole source awards) for goods and non-professional services over \$50,000 shall be posted on the DGS single electronic procurement web site (*Code of Virginia*, § 2.2-4301). Professional service procurements must be posted over \$30,000.
- 4.23 b. **General.** Professional Services as defined in § 2.2-4301 of the *VPPA* means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, and professional engineering. In solicitations involving both professional and nonprofessional services, see guidance contained in section 4.21. Public posting is required for professional service procurements over \$30,000.
- 5.1 b. **Written.** Unless set-aside for Small businesses only (see 3.10.g), purchases over \$5,000 and up to the small purchase dollar threshold of \$50,000 require soliciting at least four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, in writing (see 3.18, Publicly Posted Notices). Estimate the total cost, including all possible renewal periods if a term contract, to determine if the procurement will not exceed \$50,000. The expected trade-in value of equipment shall not be considered when determining the anticipated total value of a contract. If fewer than the required number of sources are solicited, the reasons shall be documented.
- 5.3. **Single Quotation.** (Up to \$5,000)
 - a. Where the agency's estimated cost of goods or nonprofessional services is \$5,000 or less, purchases may be made upon receipt of a minimum of one (1) written or telephone (oral) quotation (see flowchart, Annex 5-C) from a minority or women-owned business, if available. Additional sources may also be solicited. To avoid allegations of collusive or other related fraudulent practices, a record of the quotation must be kept with the file. If a telephone quote is solicited, a record shall be kept of the name and address of the vendors contacted, the item description or service offered, price quoted, delivery dates and F.O.B. point, names of persons giving and receiving the prices and the date the information was obtained. Notation on the requisition form is considered to be an adequate record or see Annex 5-G, and 5-H, for copies of sample forms to use in recording information. If more than one quote is solicited, the award will be made to the lowest responsive and responsible bidder; however, the award may be made to a reasonably priced minority or women-owned bidder that is other than the lowest priced bidder when such purchases are made under a remedial procurement plan established in accordance with guidelines prescribed by the DMBE. If the award is made to other than the lowest priced bidder under a remedial procurement plan, the award shall be made to the next lowest responsive and responsible minority or women-owned bidder. When using charge cards, solicit a minimum of one (1) minority or women-owned business, if available.

- 5.6 b. Unless set-aside for Small businesses only (see 3.10.g), solicit four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available. If fewer than the required number of sources are solicited, the reasons shall be documented.
- 5.6 d. Evaluate and award. The award may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest priced bidder when such purchases are made under a remedial procurement plan established in accordance with guidelines prescribed by the Department of Minority Business Enterprise (DMBE). If the award is made to other than the lowest priced bidder under a remedial procurement plan, the award shall be made to the next lowest responsive and responsible minority or women-owned bidder.
- 5.7 a. **Unsealed Proposals** (Over \$5,000 to \$50,000).
 Agencies and institutions may obtain required goods or nonprofessional services using an informal Request for Proposals up to \$50,000 (see flowchart, Annex 5-F). Unsealed proposals for professional services may be solicited by faxback or informal Request for Proposals up to \$30,000 (see Annex 5-I for Faxback form). A written determination for the use of competitive negotiation is not required for unsealed or informal RFPs. The solicitation should include a cover sheet, a general description of what is being sought, the factors and weights to be used in evaluation, the Commonwealth's General Terms and Conditions (either in full or by reference), and any special terms and conditions including unique capabilities or qualifications that will be required.
 - 1. Unless set-aside for Small businesses only (see 3.10.g), solicit four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, by mail, fax, or electronically.
- 5.7 b. 8. Unless set-aside for Small businesses only (see 3.10.g), solicit four (4) valid sources, including a minimum of two (2) minority or women-owned businesses, if available, by mail, fax or electronically. If fewer than the required number of sources are solicited, the procurement file must contain a statement as to the efforts made to obtain the required number of sources. *VBO* advertising on eVA is not required up to \$50,000.
- 6.2 e. **Sources.** Unless set-aside for Small businesses only, solicit at least six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available. If fewer than the required number of sources are solicited, the reasons must be documented in writing and placed in the purchase file.
- 6.3 d. **Award.** The contract is awarded to the lowest responsive and responsible bidder (see 3.21) unless a remedial procurement plan is established in accordance with guidelines prescribed by DMBE, then the award, up to \$100,000, may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest responsive and responsible bidder (see 3.10 f.). If the award is made to other than the lowest priced bidder under a remedial procurement plan, the award shall be made to the next lowest responsive and responsible minority or women-owned bidder.
- 7.2 g. Unless set-aside for Small businesses only, for the purchase of material, equipment, supplies or nonprofessional services estimated to cost \$50,000 or more, RFPs shall be sent to at least six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available. If fewer than the required number of sources are solicited, the reasons must be stated in writing and placed in the purchase file.
- 7.5 i. Unless set-aside for Small businesses only, solicit six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, if available, by mail, fax or electronically, and publicly post a copy of the solicitation on the DGS/DPS eVA web site www.eva.state.va.us. If fewer than the required number of sources are solicited, the procurement file must contain a statement as to the efforts made to obtain the required number of sources. *VBO* advertising is required. In addition to advertising in the *VBO*, BVAs over \$50,000 shall be advertised in a newspaper of general circulation in the area in which the contract is to be performed.

11.4 **Alternative Dispute Resolution (ADR)**

- a. Alternative Dispute Resolution is designed to increase the opportunity for relatively inexpensive and expeditious resolution of contract disputes. If an agency's final decision denying a contractual claim is challenged, the contractor and the agency are encouraged to resolve the dispute through the informal ADR process described below. However, participating in the ADR process does not relieve the contractor from complying with the filing deadlines for claims listed in 11.3, and does not imply that the agency's previously-issued decision is suspended or no longer final.
- b. The contractor requesting ADR shall give written notice to the agency purchasing office identifying the portions of the agency's decision that are in dispute and requesting that ADR be used. If the agency agrees to ADR, the agency and contractor shall each appoint a representative to participate in ADR on its behalf. Each party's representative shall be a senior manager who is not an attorney and who was not previously involved in the dispute. Each party shall furnish to the other party all non-privileged documents and information with respect to the dispute that either party believes to be appropriate and germane. The representatives may then negotiate in an effort to resolve the dispute without the need for legal counsel. The use of a facilitator to accelerate the resolution process is encouraged.
- c. No obligation to negotiate or continue negotiating shall be inferred from this paragraph 11.4 or from the parties' agreement to use ADR, and each party shall remain free to discontinue ADR at any time. No agreement shall be deemed to arise from any communication during the ADR process, unless the agreement is reduced to writing and signed by duly-authorized representatives of both parties.
- d. Any compensation and expenses paid to the facilitator shall be shared equally by the two parties. In no event shall either party be entitled to reimbursement from the other party for any other cost incurred or effort expended as a result of the ADR process.

- 14.5 e. **Quick Quote (over \$5,000 to \$50,000):** Solicitation of bids or quotes via Quick Quote is mandatory for non-contract requirements between \$5,000 and \$50,000. Unless set-aside for Small businesses only, solicit a minimum of four (4) valid sources; including two (2) minority or women-owned businesses, if available. Quick Quote may also be used to solicit a quote(s) for requirements under \$5,000. Quick Quote solicitations should be open for a minimum of one (1) day to allow vendors to return pricing by the closing date and time. Vendors must be registered in eVA in order to respond electronically to Quick Quotes in eVA. Electronic Quick Quote responses and other methods for vendors to respond to Quick Quotes may be used simultaneously. Provide the Standard eVA Term and Condition in Annex 14-A when providing Quick Quote information to an ad hoc vendor. The award may be made to a reasonably priced minority or woman-owned bidder that is other than the lowest priced bidder when such purchases are made under a remedial procurement plan established in accordance with guidelines prescribed by the Department of Minority Business Enterprise (DMBE). If the award is made to other than the lowest priced bidder under a remedial procurement plan, the award shall be made to the next lowest responsive and responsible minority or women-owned bidder. The resulting order must be processed through eVA. Reference the Quick Quote number in the header cross-reference field of the eVA requisition. Quick Quote solicitations and award notices are not required to be posted on the eVA web site.
- 14.5 g. **Quick Quote (over \$50,000):** Quick Quote shall not be used to solicit competition for requirements over \$50,000; however, emergency purchase requirements meeting the criteria of paragraph 9.1 may be solicited via Quick Quote up to any dollar amount.

- 14.13 **eVA Multiple Orders.** When issuing solicitations that will result in more than ONE eVA purchase order as a result of the award, either by the establishment of a term contract or multiple delivery orders, the agency should include an explanation of how resulting orders from the award will be issued through eVA. Include the approximate number of orders on a weekly, monthly, quarterly or annual basis. Example: 4 purchase orders, quarterly; 12 purchase orders, one per month; 9 purchase orders, one per month during the school term; one purchase order annually. See Appendix B., Section II, special term and condition #59 to include in solicitations for term contracts or multiple delivery orders.

Appendix A

Set-asides: Reserving a procurement transaction exclusively for a specific group. The purpose of Small business set-asides is to award certain contracts exclusively to small businesses.

Appendix B, Section I, General Terms and Conditions, Paragraph U, Announcement of Award:

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA website (www.eva.state.va.us) for a minimum of 10 days.

* **When Used:** Include in all solicitations over \$50,000.

Appendix B, Section II, Special Terms and Conditions, Paragraph 59, eVA Business-to-Government Contracts and Orders:

59. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The contract will result in (** _____) eVA purchase order(s) with the 1% eVA transaction fee capped at \$500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

- a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from www.eva.state.va.us. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.
- b. Provide an electronic catalog (price list) or index page catalog for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eva.state.va.us. Contractors should e-mail Catalog or Index Page information to eva-catalog-manager@dgs.state.va.us.

* **When Used:** Include in solicitations and renewals of term contracts (statewide, single agency, and cooperative) and other solicitations that will result in more than one purchase order issued by state agencies and institutions.

** **If the quantity of orders that will be placed against the contract is known, insert the number of orders in the blank provided, e.g., one, 12 or monthly.**

** **If the exact quantity of orders is unknown, change the first sentence to read, "It is anticipated that the contract will result in multiple eVA purchase orders (i.e., one for each delivery requirement) with the 1% transaction fee capped at \$500 per order."**

Appendix B, Section II, Special Terms and Conditions, Paragraph 60, Set-asides:

60. **SET-ASIDES.** This solicitation is designated for Certified small business participation only. Certified small businesses are those businesses that hold current certification from the Virginia Department of Minority Business Enterprise.

Annex 3-B**Summary of Procurement Policies****I. Small Purchases - Goods and Services, other than Professional Services**

Thresholds	Procedures
Up to \$5,000	Solicit a minimum of one (1) quote from a minority or women-owned business, if available. (Use of the Small Purchase Charge Card is encouraged up to \$5,000.)
Over \$5,000 to \$50,000	<p>Unless set-aside for Small businesses only (see 3.10.g), solicit a minimum of four (4) valid sources, including a minimum of two (2) minority or women-owned businesses in writing or electronically. Use Quick Quote for bids or quotes from \$5,000 to \$50,000.</p> <p>Advertising in the <i>Virginia Business Opportunities (VBO)</i> on the eVA web site (www.eva.state.va.us) is required over \$50,000 for goods and services.</p>

II. Competitive Sealed Bidding or Competitive Negotiation (Code of Virginia, § 2.2-4301 and §2.2-4303)

Threshold	Procedures
Over \$50,000; may be used for lesser amounts.	<p>Unless set-aside for Small businesses only (see 3.10.g), solicit a minimum of six (6) valid sources, including a minimum of four (4) minority or women-owned businesses, in writing, including electronically through eVA. Use one of the following methods:</p> <ol style="list-style-type: none"> 1 - Competitive sealed bidding. 2 - Two-step competitive sealed bidding. 3 - Competitive negotiation. A written justification is required for use of #3. <p>Required for purchases over \$50,000 unless an exception (see III. below).</p>

III. Exceptions To Competitive Procurement (Code of Virginia, § 2.2-4303 E and F)

Thresholds	Procedures
Emergency (See Chapter 9)	Take immediate action if required to protect personal safety or property. Other emergencies, seek competition to the extent practicable. Requires written determination signed by the agency/institution head or designee.
Sole Source (Unlimited dollar amounts) (See Chapter 8)	Over \$5,000, a written quotation must be obtained from the vendor. Requires written justification approved in advance by the agency/institution head. Over \$50,000 requires approval from DGS/DPS. Agencies and institutions may make contract awards after appropriate approval. Purchase using noncompetitive negotiation.
Used Equipment up to \$50,000	Competition not required. See 1.5c & 4.17.

IV. Exemption from Purchasing through DGS/DPS

Thresholds	Procedures
Various	See 1.5.

Note: Public posting required for all solicitation and award actions exceeding \$50,000 (see 3.18).